

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

JACKIE LEE BOYD #1263639

§

v.

§

CIVIL ACTION NO. 6:21cv109

KEN PAXTON, ET AL.

§

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Jackie Lee Boyd, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Upon initial screening of the complaint as required by the Prison Litigation Reform Act (PLRA), the Magistrate Judge determined that Plaintiff, who had not paid the filing fee, was barred from proceeding *in forma pauperis* (IFP) by 28 U.S.C. § 1915(g). (Docket No. 2.) Specifically, Judge Mitchell found that Plaintiff had at least three strikes under the PLRA prior to filing this lawsuit and that he did not establish that he was in imminent danger of serious physical injury as of the date of filing. Accordingly, the Magistrate Judge issued a Report on March 19, 2021, recommending that Plaintiff's motion to proceed IFP be denied and that the lawsuit be dismissed pursuant to 28 U.S.C. § 1915(g) unless Plaintiff paid the \$402.00 filing fee within fifteen days. (*Id.*)

A copy of this Report was mailed to Plaintiff, but he has not paid the filing fee, and no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420-21 and n.9 (5th Cir. 2019).

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a

party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). Here, Plaintiff did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").


Having reviewed the Magistrate Judge's Report and Recommendation, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. The Court therefore adopts the Report and Recommendation of the United States Magistrate Judge as the findings of this Court. Accordingly, it is

ORDERED that the Report and Recommendation of the United States Magistrate Judge, (Docket No. 5), is **ADOPTED** as the opinion of the Court. Plaintiff's motion to proceed IFP (Docket No. 2) is **DENIED**. It is also

ORDERED that Plaintiff's civil rights lawsuit is **DISMISSED**, with prejudice for purposes of proceeding IFP under 28 U.S.C. § 1915(g)—but without prejudice as to the refiling of his lawsuit without seeking IFP status. Finally, it is

ORDERED that any remaining pending motions are hereby **DENIED** as **MOOT**.

So **ORDERED** and **SIGNED** this **6th** day of **May, 2021**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE